

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KYLE PETERSEN,

Plaintiff,

V.

ANTHONY SIMS, JR.,

Defendant.

Case No. 1:20-cv-00884-DAD-EPG (PS)

ORDER DIRECTING SERVICE BY THE
UNITED STATES MARSHAL WITHOUT
PREPAYMENT OF COSTS

Plaintiff, Kyle Petersen, is proceeding *pro se* and *in forma pauperis* in this civil rights action, pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). In an order entered on July 7, 2021, the Court found service of the complaint to be appropriate. Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court is directed to forward the following documents to the U.S.

Marshal:

- a) One completed and issued summons for each individual to be served;
- b) One completed USM-285 form for each individual to be served;
- c) One copy of the complaint (ECF No. 1) for each individual to be served, plus one copy for the United States Marshal; and
- d) One copy of this order for each individual to be served, plus one copy for the United States Marshal.

2. Service on the United States of America:

1 a. Within ten days from the date of this order, the United States Marshal is
2 directed to serve the United States of America by serving a copy of the
3 summons, the complaint (ECF No. 1), and a copy of this order, in accordance
4 with the provisions of Fed. R. Civ. P. 4(i)¹ and 28 U.S.C. § 566(c), upon the
5 following:

6 **i. United States Attorney for the Eastern District of California; and**
7 **ii. Attorney General of the United States at Washington D.C.**

8 b. Within ten days after such service is effected, the United States Marshal shall
9 file the return of service for that service.

10 3. Service on individual Defendant:

11 a. Within ten days from the date of this order, the United States Marshal is
12 directed to notify the following Defendant of the commencement of this action
13 and to request a waiver of service in accordance with the provisions of Fed. R.
14 Civ. P. 4(d) and 28 U.S.C. § 566(c):

15 **i. Anthony Sims, Jr., Forensic Specialist and Special Agent at the**
16 **U.S. Department of Homeland Security Investigations in or about**
17 **May 2017 through February 2019; and**

18 b. The United States Marshal shall file any returned waiver of service as well as

19 20 ¹ Federal Rule of Civil Procedure 4(i) provides:
21
22 To serve the United States, a party must:
23
24 (A)(i) deliver a copy of the summons and of the complaint to the United States attorney
25 for the district where the action is brought--or to an assistant United States attorney or
26 clerical employee whom the United States attorney designates in a writing filed with the
27 court clerk--or
28 (ii) send a copy of each by registered or certified mail to the civil-process clerk at
the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the
United States at Washington, D.C; and

(C) if the action challenges an order of a nonparty agency or officer of the United States,
send a copy of each by registered or certified mail to the agency or officer.

1 any request for waiver of service that are returned as undelivered as soon as
2 they are received.

3 c. If a waiver of service is not returned by the Defendant within sixty days of the
4 date of mailing the request for waiver, the United States Marshal shall:

5 i. Personally serve process and a copy of this order upon the Defendant
6 pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28
7 U.S.C. § 566(c).

8 ii. Within ten days after personal service is effected, the United States
9 Marshal shall file the return of service for the Defendant, along with
10 evidence of any attempts to secure a waiver of service of process and of
11 the costs subsequently incurred in effecting service on the Defendant.
12 Said costs shall be enumerated on the USM-285 form and shall include
13 the costs incurred by the United States Marshal for photocopying
14 additional copies of the summons and complaint and for preparing new
15 USM-285 forms, if required. Costs of service will be taxed against the
16 personally served Defendant in accordance with the provisions of Fed.
17 R. Civ. P. 4(d)(2).

18 d. If the Defendant waives service, the Defendant is required to return the signed
19 waiver to the United States Marshal. The filing of an answer or a responsive
20 motion does not relieve the Defendant of this requirement, and the failure to
21 return the signed waiver may subject the Defendant to an order to pay the costs
22 of service pursuant to Fed. R. Civ. P. 4(d)(2).

23 e. In the event that the Defendant either waives service or is personally served,
24 the Defendant is required to reply to the complaint. 42 U.S.C § 1997e(g)(2).

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4. In accordance with 42 U.S.C. § 1997e(c), the Court has screened and previously found service of the Complaint appropriate.

IT IS SO ORDERED.

Dated: September 8, 2021

/s/ *Eric P. Groj*
UNITED STATES MAGISTRATE JUDGE